

Re: Docket ID EBSA-2023-0014

My name is Micah Hauptman and I am the director of investor protection at the Consumer Federation of America (CFA).¹ I am writing to request to testify on behalf of CFA at the upcoming hearing on the “Retirement Security Rule: Definition of an Investment Advice Fiduciary and Associated Prohibited Transaction Exemption Amendments.” CFA has written extensively on this topic² and intends to submit a detailed letter on the rule proposal by the comment deadline, January 2nd 2024.

If invited to testify, I would focus on the need for updating the regulatory definition of fiduciary investment advice under ERISA, and rebutting arguments put forward by various industry opponents regarding the proposed rule.

Within these general topics, I would be prepared to comment on the following points:

1. Why it’s critical that loopholes in the current regulatory definition of fiduciary investment advice be closed so that rollover advice, advice to retirement plans, and advice regarding non-securities are covered.
2. Why the Securities and Exchange Commission’s (SEC’s) Regulation Best Interest does not fully address the problem of conflicted retirement investment advice.
3. Why the National Association of Insurance Commissioner’s (NAIC’s) Model Suitability Rule for Annuity Transactions does not provide the strong protections retirement investors need and expect.
4. Why industry opponents’ claim that the proposal is no different from the 2016 rule is meritless.
5. Why industry opponents’ claim that the proposal would result in a loss of access to advice is meritless and inconsistent with their legal claims before the 5th Circuit that they provide arms’ length commercial sales pitches like car dealers, not advice.
6. Despite their legal claims to the contrary, market participants function as advice providers in positions of trust and confidence with the retirement savers they serve. The proposed re-definition appropriately captures the types of relationships and interactions that retirement savers reasonably view as advisory in nature.

Please let me know if you have any questions or need additional information.

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¹ CFA is a non-profit association of more than 250 national, state, and local pro-consumer organizations. It was formed in 1968 to represent the consumer interest through research, advocacy and education.

² See, e.g., Letter from CFA, to the DOL, July 24, 2015, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00660.pdf>; Letter from CFA, to the DOL, September 24, 2015, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03031.pdf>; Letter from CFA, to the DOL, August 6, 2020, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA29/00039.pdf>.